

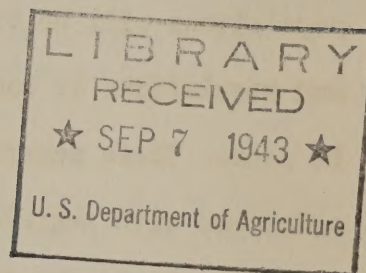
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CONNECTICUT STATE MILK CONTROL ACT



PAPER NO. 3. Series on State Milk Control Acts, Dairy Section,
Agricultural Adjustment Administration, United States Department
of Agriculture.

January 7 , 1937.

This is one of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulations issued thereunder, and, in general, the legal developments in connection with their administration and enforcement. One paper will be devoted to each State having such an act.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.

STATE MILK CONTROL IN CONNECTICUT
THE ACT, ITS ADMINISTRATION AND LEGAL STATUS

PART ONE

I. General Character of Legislation.

Regulation of the fluid milk and cream industry was adopted as a permanent policy in Connecticut in the spring of 1933 with the passage of an act creating and defining the powers of "a board of milk control." Two years later this law was amended by an act, approved May 29, 1935, substituting "a milk administrator" for the board of milk control. Two short clarifying amendments to this latter act were approved June 17, 1935.^{1/} In neither act is there a "legislative finding" or a "declaration of policy," features which are characteristic of milk control legislation enacted for an emergency period only. In the present act under consideration the administrator "shall seek to achieve the purpose of this act as far as possible by promoting, encouraging, and fostering cooperation among the producers, among dealers, and between producers and dealers, and by the elimination of demoralizing trade practices."

Type of Governing Agency

A state agent, known as the "milk administrator," is, by the terms of the act, to be appointed by the Governor for a term of two years, with the advice and consent of the General Assembly. To qualify for the office his chief occupation must have been the production of milk during the two years immediately preceding July 1, 1935. Two deputies, at least one of whom shall be actively engaged in milk production, are to be appointed by the administrator and shall have, under his direction, all powers exercisable by him. As far as possible, other special services are to be performed "by the state departments, including the department of agriculture, the department of the dairy and food commissioner, the state department of health, and the attorney general's department."

Conditions Under Which Powers of Administrator
May Be Exercised

Although the administrator is authorized to respond to complaints in making investigations, he may conduct such investigations on his own initiative and otherwise exercise all powers granted him by law. The exercise of the administrator's power to license all dealers selling milk within the State is mandatory.

^{1/} The original act, the effective dates of which are May 24 and June 23, 1923, is found in chapter 107a, Cumulative Supplement to the General Statutes, section 516b to and including section 530b. The amendatory acts are found in chapters 227 and 319 of the same supplement.

Source of Financing

Revenue is secured from the payment of license fees graduated according to the volume of business done by licensed dealers. Any unexpended balance remaining at the end of any biennial period in excess of \$5,000 is to be added to the general funds of the State. Administrative costs are required by the act to be kept within the amount derived from license fees.

Statutory Protective Provisions

The act contains a separability clause but does not include the "saving" clause found in many State acts designed to avoid any action within the sphere of Federal jurisdiction.

II. Regulatory Provisions.

Powers of the Administrator

Investigation, records, and reports.- The administrator's power to investigate and regulate extends to the production, transportation, manufacture, storage, distribution, delivery, and sale of milk and milk products, subject to minor exceptions. "Milk" is defined as "fluid milk and cream." Controversies or differences arising out of contracts, agreements, or unethical and unfair practices affecting producers, dealers, or consumers may be investigated on complaint, and findings by the administrator made pursuant thereto are final and binding by agreement of the parties in advance of hearing. Such investigations may be made without complaint and reports submitted to the Governor in respect thereto. The power of investigation and regulation is supported by the power to (1) subpoena persons, books, records, and accounts, (2) administer oaths, (3) enter any place where milk is produced or handled, and (4) inspect all books, papers, records, or documents at any place within the State. In addition, failure of any person to appear in response to subpoena or to produce books and records or to answer any question addressed to him by the administrator may subject such person to imprisonment under sentence by a superior county court. The administrator also has the power to require dealers to keep necessary records and to submit reports necessary for the proper administration of the act and covering in detail purchases, sales, and uses of milk purchased, and payments made to producers.

The act does not require information obtained by the administrator to be kept confidential, and in some instances results of investigations are to be reported to the Governor and made public documents. It is to be assumed, however, that any constitutional protection against indiscriminate search of private records and publication of the same is not transgressed.

Licensing powers.- All dealers, defined as any person who distributes for sale or sells milk within the State except for consumption on the premises where sold, are required to be licensed upon the submission of application and information required by the administrator and payment of the specified license fee. Compliance with the State sanitary requirements and with provisions regarding the production, processing, handling, and sale of milk is required as a condition for granting or renewing a license. Licenses may be revoked either for failure, without reasonable cause, to make payment for milk purchased for a period of three months or more, upon presentation of evidence to the administrator, or for repeated violations of any provision of the act or rule or regulation made thereunder.

Cooperation with other authorities.- The act provides that "In order to secure uniform milk control," the administrator "shall confer and cooperate with the legally constituted authorities of the United States and other states" and shall have power to conduct joint investigations, hold joint hearings, issue joint or concurrent orders, or enter into compacts for uniform milk control, subject to required Federal approval.

Provisions in Regard to Price Regulation

Prices to be paid producers.- The administrator may fix minimum prices to be paid to producers by all dealers for each class and grade of milk. There is no formula or standard laid down in the act to guide the administrator in the fixing of such minimum prices. The administrator is empowered to investigate and regulate the transportation and delivery of milk, and may, therefore, in fixing prices make allowance for differences in the cost of transportation and delivery.

Method of payment to producers, base-rating.- The administrator is specifically authorized to establish "a production rating system" which may presumably be made a part of a payment plan to producers. Producer-dealers are not subject to such a rating plan except as to that portion of their production in excess of their sales as dealers. The administrator is given the power to require dealers to pay for milk on "a uniform method" and according to the class determined by the use to which such milk is put. This may be equivalent to what is termed in some markets "an individual-distributor pool" although it is not so designated in the act. Pooling of milk among all producers irrespective of the dealers to whom their milk is sold, in order to bring about uniformity in prices to producers, is not specifically authorized. Under the act of 1933 a state-wide pooling arrangement was undertaken but was discontinued after an adverse court decision. In the amended act the phrase "and by promoting a more equitable distribution of the burden of the surplus" was eliminated from the declaration of purpose, thus apparently removing the legislative basis for market-wide pools.

Resale prices.- The administrator may establish minimum resale prices, for each class and grade of milk, applicable to specific markets for a fixed time, and governing the specific transactions enumerated in the act. As in the case of minimum prices to producers, the act contains no legislative standard upon which to construct such prices.

Differences in economic conditions recognized.- In order to secure uniformity of results the administrator is authorized to issue different rules or orders for different market areas in recognition of the different economic conditions existing therein.

Powers With Respect to Unfair Competition, Trade Practices, etc.

The elimination of unfair and demoralizing trade practices by the administrator is declared to be one of the methods by which the purposes of the act are to be achieved. Specific power is given to prevent the practices listed in the act which have the effect of reducing the price below the minimum established by the administrator. The power of investigation, in connection with which findings may be made final on agreement of the parties, extends to unethical and unfair practices in the industry.

Limitations and Exceptions

An important exception or limitation contained in the act reads as follows: "No provision of this act shall affect any contract between a nonresident milk dealer and a resident milk producer or between a resident milk dealer and a nonresident producer." The second and also important limitation provides that nothing in the act shall relieve other State officials from their statutory duties with respect to various phases of the dairy industry, nor alter requirements of law or regulations of the Milk Regulation Board as to standards of milk or the production, handling, processing, labeling, or sale thereof. An exception of minor importance has been mentioned - that dealers selling a daily average amount of 10 quarts or less shall be exempt from the making of reports to the administrator, except upon special demand. Finally, there is the section designed to define and safeguard "cooperative corporations," considered hereafter under "Status of Cooperative Associations of Producers."

Violation

Unlawful acts.- No specific act is declared by the statute to be unlawful although licensed dealers are specifically prohibited from selling to unlicensed dealers. However, designated penalties apply to any violation of the act.

Penalties.- Refusal to obey a court order in support of a subpoena of persons or books and records subjects the offender to a possible imprisonment not to exceed 90 days.

Violation by any person or any officer of any firm or corporation of any provision of the act, or any rule or regulation of the administrator made in conformity thereto, subjects the violator to a fine of not

more than \$100.00 or imprisonment for not more than three months or both fine and imprisonment. "Repeated violation shall be cause for revocation of a license by the administrator."

Legal Remedies

Board.-- With one exception, specific legal remedies are not enumerated as such in the act, the exception being the right of application by the administrator to a superior court for an order compelling obedience to a subpoena issued by the administrator or his deputies. The provision creating penalties for violation provides the basis for court action. These two requirements are the principal source of initial enforcement action by the administrator.

Aggrieved parties.-- Parties aggrieved by any action of the administrator may appeal to the superior court of the county in which he resides within ten days after notice to him of such action in the manner prescribed for appeals from decisions of the Public Utilities Commission. Joinder by other affected parties within the ten-day period is also permitted. In case of such an appeal, when stay of action would increase the damage which the administrator seeks to prevent, "the court, without allegation or proof that an adequate remedy does not exist, may enjoin the appellant as justice may require."

With respect to an appeal taken from action revoking a license on the ground that the licensee has failed without reasonable cause to make payment for milk purchased, for a period of three months or more, the appeal is not to act as a stay of proceedings which will permit continued violation on the part of the appellant.

Status of Cooperative Associations of Producers

A cooperative association of producers, organized under the laws of Connecticut or similar laws of other States and engaged in the marketing of milk, is given full freedom to blend the total proceeds from all sales of milk made on behalf of its members, provided, (1) that such sales to dealers or contracts of sales be on the basis of prices established by the administrator, and, (2) that the association shall account to its members in accordance with the rulings of the administrator and applicable to dealers purchasing from producers.

Associations of producers are affected by other provisions of the act: (1) if engaged in distribution so as to come within the definition of the term "dealer" under the licensing requirement; (2) the power of the administrator to prevent unfair trade practices, such as rebates or trade discounts not approved by the administrator, would no doubt apply to associations; (3) the power of investigation and of requiring reports

and records would no doubt apply in appropriate instances; and (4) the administrator is specifically authorized to assist such associations in obtaining fair competitive charges for milk transportation.

PART TWO

I. Administrative Procedure, Rules, and Regulations.

General exercise of authority in State.- The powers of the administrator, enumerated in the foregoing section, appear to have been generally exercised, with the exception of his power to establish "a production rating system," which has not yet been introduced, and the fixing of minimum resale prices^{2/} in specified market areas, with the exception of the Bridgeport market area in which resale prices affecting transactions between dealers and subdealers were made effective September 1, 1936.

With two exceptions the regulations issued by the administrator apply to the entire State, the first being the designation of New London and Windham Counties as a market area in which the price for Class I milk is somewhat less than that in surrounding areas. The second is that mentioned in the preceding paragraph with respect to the application of minimum resale prices between dealers and subdealers to the Bridgeport area only.

Persons; products.- The total number of licensees in the State is 8,383, classified as follows: Merchant dealers, including 8 out-of-State dealers, 290; producer-dealers 2,191; subdealers 254; stores (limited licensees 1-10 quart daily sales) 3,025; other stores 2,623.^{3/}

Regulation has been confined to the fixing of minimum prices to be paid producers for fluid milk, including that from which fluid cream is derived, according to the following classifications:

- Class I milk is all milk sold in fluid form by any distributor;
- Class II milk is all milk made into cream that is sold in fluid form, except for manufacturing purposes.
- Class III milk is all milk made into manufactured products, except butter; and
- Class IV milk is all milk made into butter.

The schedule of minimum resale prices between dealers and subdealers established in the Bridgeport area includes buttermilk, the only item which

^{2/} The Board of Milk Control established market areas temporarily on taking office, fixing resale prices as a result of conferences. These area prices were effective until August 10, 1933, when a single resale schedule for the whole State became effective. The state-wide schedule, amended from time to time, was in effect until April 1, 1935, when fixed resale prices were discontinued.

^{3/} From table 10, News Release, September 25, 1936. Figures are subject to slight correction.

might be considered a "milk product," for the reason that cream is included in the definition of milk, while buttermilk is not. In connection with minimum prices to producers, the administrator has established premiums for Grade-A milk, butterfat differentials, and total maximum haulage charges. Additional deductions payable to cooperatives are permitted only with the approval of the administrator.

Trade practices.- Prohibition of specified unfair trade practices is usually associated with the fixing of minimum resale prices. Under the act of 1933, when minimum resale prices were generally fixed throughout the State, they were accompanied by an order prohibiting all discounts, rebates, free products, or premiums. With minimum resale prices established only in the Bridgeport area the administrator has applied such prohibition only to that area, in the form of prohibiting any concession on the part of a dealer or licensee in excess of a trade discount of 2 percent for actual payment within 10 days of first purchase.

Records and reports.- The powers conferred upon the administrator by the act with respect to records and reports are quite generally exercised. All dealers, except limited licensees and stores, are required to keep records, such as the milk and cream received, daily sales by classes, and complete plant records, dates, amounts, and basis of payment to producers, purchases of dairy products from sources other than producers, and separate accounts with wholesale customers and subdealers, all of which are to be preserved and kept accessible for inspection for a period of at least two years. All licensees except limited licensees and stores are required to submit periodic, signed reports covering the quantities of milk and cream produced or bought, quantities sold in the various classes, and prices paid and received with respect to the several classes. Effective December 1, 1936, all dealers are required to submit itemized statements periodically to producers from whom they purchase milk, showing, among other things, amounts due from previous periods, quantities received in the current period, with tests, premiums, and deductions, and amounts paid or remaining unpaid.^{4/}

Hearings.- Provisions prescribing administrative procedure are absent from both the act and the regulations issued by the administrator. The law specifically requires the administrator to mail every licensee a copy of such rules and regulations issued by him, bearing the effective date, in addition to being filed in the office of the Secretary of State. The administration has followed a definite policy of allowing violators to explain their actions and correct methods, before legal remedies are sought.

Milk marketing program committee.- A referendum conducted by the administration in Connecticut as to methods of marketing milk indicated such divergences of opinion among producers that they appointed a committee of seven producers on May 5, 1936, to study milk marketing conditions in the State and suggest a sound program under which Connecticut producers should market their milk. This committee made an exhaustive study of material made available by the administration and interested parties, as well as conferring with those who were actively engaged in performing marketing services, either producing or selling milk on the market. Its report was released September 28, 1936, and is available for distribution on request.

PART THREE

Legal Status

Litigation under act of 1933.- Two cases involving the original act are important landmarks in understanding the legal status of the Connecticut milk control law. The first⁵/involved the validity of the equalization plan. An injunction was sought to prevent the board from revoking the plaintiff's license for failure to make equalization payments. The decision, rendered March 2, 1934, held that there was no specific or implied grant of power in the act to support the equalization plan. As a result, the board discontinued the equalization program and refunded equalization funds then in its possession.

The second case⁶/was an appeal from a decision of the board revoking a license on the ground that the licensee had continued to sell milk below the minimum prices fixed by the board. Of the 22 allegations in the bill of complaint five were found partially or wholly in favor of the appellant, the effect of which was to restore the appellant's right to a dealer's license. The remaining 17 allegations, which were directed at the constitutionality of the act, were rejected by the court. Among the allegations rejected were that (a) the act abridged freedom of contract and thus was a violation of due process, (b) there was insufficient evidence to justify ruling on unfair trade practices, (c) the dairy business was not affected with a public interest, and absence of such findings by the legislature resulted in arbitrary action by the board, (d) absence of provision for hearing invalidated the board's action, and (e) absence of a legislative standard to guide the board in fixing prices amounted to an unlawful delegation of power. The effect of these two decisions was, in the main, to support the program of milk control.

⁵/ Morton E. Pierpont vs. Board of Milk Control and Milk Producers-Dealers Association vs. Board of Milk Control, before the Superior Court of Hartford County.

⁶/ Kent E. Stoddard vs. Board of Milk Control.

Litigation under act as amended:- The amended act is similar to the act of 1933 except as to changes noted in the foregoing parts of this paper and no serious attempt has been made to attack the constitutionality of the act.

Prosecutions by the milk administrator up to July 29, 1936, include the following: (1) in four separate actions five producer-distributors were charged with failure to maintain adequate records and in each case each offender was fined an amount ranging from \$5.00 to \$15.00 and costs; and (2) three dealers, each in a separate action, were charged with failure to maintain minimum prices to producers, and in each instance a fine of from \$10.00 to \$15.00 was imposed with costs. Three of these cases were heard in the City Court of New Haven, four cases were heard in "town" or justice courts, and one case was heard in the Superior Court of Hartford County. In general, therefore, the milk control act has been upheld by Connecticut courts.

The first of these is the fact that the Commission has not yet received the necessary information from the Government of the United States to enable it to make a proper assessment of the situation in the United States. The second is the fact that the Commission has not yet received the necessary information from the Government of the United States to enable it to make a proper assessment of the situation in the United States.

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